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**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
THOMAS SHANKS**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and Dr. Thomas Shanks ("Consultant") as of January 20, 2004.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on January 31, 2005, the date of completion specified in Exhibit A and Exhibit B, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 6. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 6.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$21,960 for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth in Exhibit A. Consultant shall submit all invoices to City in the manner specified herein.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement. City will withhold 10% of the earned fee until all project deliverables are provided and the project is completed, at which time the Consultant shall invoice the City for the retained amount.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the

entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.2 Reserved.

- 2.3 Reimbursable Expenses.** Expenses not listed in Exhibit A are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

Section 3. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 3.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City's Risk Manager. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

3.2 Commercial General/Automobile Insurance

- 3.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this

Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

3.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

3.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be uspended, voided, or canceled by either party, reduced in coverage or in

limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- 3.3 Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of this Section 3. Any such waiver or variation shall not be effective unless made in writing.

Section 4. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 5. STATUS OF CONSULTANT.

- 5.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all

claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

5.2 Consultant No Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

5.3 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 6. TERMINATION AND MODIFICATION.

6.1 Termination. City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contract or prepared by or for Consultant or the City in connection with this Agreement.

6.2 Extension. City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

6.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

6.4 **Contract Administration.** This Agreement shall be administered by Darryl Wong who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

6.5 **Notices.** Any written notice to Consultant shall be sent to:
Tom Richardson, Principal
2290 North First Street, Suite 204
San Jose, CA 95131

Any written notice to City shall be sent to:
Mike McNeely, City Engineer
455 East Calaveras Boulevard
Milpitas, California 95035

6.6 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

Exhibit A: Scope of Work/Fees and Payment
Exhibit B: Project Schedule

CITY OF MILPITAS

CONSULTANT

Thomas J. Wilson, City Manager

Thomas Shanks

ATTEST:

Gail Blalock, City Clerk
APPROVED AS TO FORM:

Taxpayer Identification Number

Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

Department/Division Head

Exhibit A - Scope of Work

Milpitas Ethics Plan

Overview

Exhibit A defines the scope of work, deliverables, schedule, variables, terms and conditions for Consultant developing and implementing an ethics plan for the City of Milpitas.

The purpose of this consulting agreement is to (1) develop an ethics plan that provides an ethics policy and program for elected and appointed officials, candidates for City Council, and non-represented city staff of the City of Milpitas and (2) to implement that plan through a variety of educational methods. Consultant will, under this agreement and the direction of city staff, and with guidance from the Milpitas City Council, develop a code of ethics, guidelines, and implementation plan. Consultant will also provide the materials and training services needed to implement the plan.

Consultant and City understand the goals of the new ethics policy are to promote, through a program of ethics education and policy:

- Increased voter participation in elections;
- Higher levels of public trust in elected and appointed officials and city management; and,
- High standards of civic conduct.

1. Consultant Responsibilities

- 1.1 Consultant will complete the tasks, steps, and deliverables according to the schedule as described in this scope of work and any accompanying documents. Any adjustments to this scope of work or accompanying documents will be made by mutual agreement and documented in writing at least two weeks in advance of the scheduled completion date.
- 1.2 All deliverables provided by Consultant will meet quality standards common to area and associated professions. The quality and content of the deliverables shall be in sufficient detail that the City shall be able to move forward to the next project step or milestone. Consultant will provide hard copy and digital copy of all deliverables.
- 1.3 Consultant shall review and carefully consider comments from the City. Consultant shall address, incorporate or reasonably answer each substantive comment, as designated by the City project manager upon consultation with the City Steering Committee.
- 1.4 Consultant will consult with, and meet with if appropriate, City staff responsible for various aspects of the project within the meeting framework listed under each task.
- 1.5 Consultant will begin work on each task after the City authorizes Consultant in writing to initiate the Task. A 10% retention shall be released upon the City's satisfactory acceptance of the work after completion of the Final Report.

2. City Responsibilities

- 2.1 Identify in writing a City project manager with the authority to answer Consultant questions, authorize Consultant to proceed, approve final versions of surveys, reports, and other consultant-produced documents.
- 2.2 Identify in writing City employee(s) with whom consultant will work to schedule appointments with City Council, staff, citizens, or others. This designation may vary through the various stages of the project or may be the same person for the duration of the project. Notice of this person will be made to Consultant in advance of each stage with enough time to schedule necessary appointments.

- 2.3 Provide Consultant with background materials listed in Item Task 1 below.
- 2.4 Comment and/or review Consultant work at any time in the process.
- 2.5 Schedule and coordinate meetings for Consultant with City staff or City representatives.
- 2.6 The time to complete tasks and deliverables will be timed to allow the City to make decisions in conjunction with regular council meetings. Subsequent work will be initiated after City provides Consultant with written authorization to begin work.

3. Schedule

The Project Schedule shall adhere to the Timetable shown in the following chart for the Consultant's scope of work. Both the Consultant and the City acknowledge that time is of the essence for the accomplishment of this Agreement outlined in Section 2. However, both parties also acknowledge the need to have a flexible process that can be adapted to accommodate certain unavoidable time delays due to the public process. No variance from the Project Schedule will occur except by City's written consent. Per the Consultant Agreement, all services will be completed by January 31, 2005 unless the term of the Agreement is changed in accordance with Section 8 of the Agreement.

Timetable

Task No.	Task Name	Weeks to Complete*	Cumulative Weeks to Complete
1.	Background Review	4	4
	City approves report, plan, finalizes awareness survey	2	6
2.	Awareness Survey	2	8
3.	Develop Code of Ethics, Guidelines and Implementation Plan	12	20
4.	Training and Implementation	16	36
5.	Final Report	3	39
	Total	39	

4. Tasks and Deliverables

Task 1: Background Review

Consultant will review and become familiar with all background information including the existing Code of Ethics in the Standard Operating Procedures and the meeting minutes for the Community Advisory Commission (CAC) and City Council. Consultant will conduct interviews to discover the unique strengths, weaknesses, opportunities, and threats facing this effort in Milpitas. Consultant will become familiar with the personalities and politics of the City, identify the key stakeholders, and make certain that they and their interests are identified, represented, and integrated into the effort as completely as possible. The Consultant will use this information to draft the awareness survey for approval.

Weeks to Complete	4 + 2 weeks for City Approval of Survey = 6
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Estimated Meetings with Council, staff, and others	10
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Deliverables

No.	Product	Description
1A	Stakeholder Report	Brief report of key stakeholders and their interests; strengths, weaknesses, opportunities, and threats facing this effort, as understood by consultant after interviews.
1B	Recommended Plan for Code Development	Based on 1a, Consultant will prepare a final Code Development Plan, including key stakeholder groups to involve.
1C	Draft Awareness Survey	Draft of survey described in Task 2.

Task 2: Awareness Survey

Upon approval of Awareness Survey, consultant will conduct, analyze, and report on the survey designed to gather information necessary for Code development from all stakeholders identified in 1A: values currently important to City, descriptions of City "at its best," stories that make people proud; stumbling blocks currently experienced; etc.

Weeks to Complete	2
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Estimated Meetings with Council, staff, and others	3
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Deliverables

No.	Product	Description
2A	Final Survey instrument	Final version of survey for on-line administration
2B	Survey analysis and report	Report of simple aggregate statistics and narrative based on completed survey.
2C	Worksheet for Ethics Code development meeting 1	Based on 2B, worksheets developed for first meeting for Code development.

Task 3: Develop Ethics Code, Guidelines and Implementation Plan

Report awareness survey results. Develop draft and final Code of Ethics, Guidelines and Implementation Plan. Present draft and final documents to CAC and City Council.

Weeks to Complete	12
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Meetings	No.
• Code Development Team	4
• CAC & City Council with survey report, drafts and final documents	4
• City staff	3
Total	7

Deliverables

No.	Product	Description
3A	Draft Code of Ethics	Identify and describe major elements of code.
3B	Draft Ethics Guidelines	Provide guidelines for real-life application of Ethics Code.
3C	Draft Implementation Plan	Identify educational methods and how to monitor program effectiveness.
3D	Final Code of Ethics	Finalize Code based on comments on draft.
3E	Final Ethics Guidelines	Finalize Guidelines based on comments on draft.
3F	Final Implementation Plan	Finalize Implementation Plan based on comments on draft.

Task 4: Training and Implementation

4A: Provide election campaign training for November 2004 candidates, their staffs, the public, appointed officials and the City Council (as appropriate.) 4B: After the November election, other training and implementation steps concerning the Code for elected and appointed officials and employees will take place.

Weeks to Complete Task 4	
• 4a	12
• 4b	4

Estimated Meetings/workshops	
• candidates/candidates' staff /volunteers(4A)	3
• Council (4A)	1
•	
• Council (4B)	2
• Commissioners(4B)	1
• Management (4B)	2
•	
• Others	2
TOTAL	15

Deliverables

No.	Product	Description
4A	Training materials	Provide training templates.
4B	Public education plan	Provide plan outlining education for ethics program.
4C	Draft final awareness survey	Following election and training, draft final survey to gauge effectiveness of Code, and to include suggestions for revision following initial implementation phase.

Task 5 Final Report

Develop public education and monitoring plan and conduct and report on 2nd awareness survey results, including a post-election assessment meeting. Provide final report containing all deliverables, analysis and templates. Summarize final report in digital presentation format.

Weeks to Complete	3
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Estimated Meetings	
• Final Report to CAC	1
• Final Report to Council	1
• Staff	1
Total	3

Deliverables

No.	Product	Description
5A	Final Report	Provide three copies of final report in 3-ring binder and a digital copy. Report contents shall include: <ul style="list-style-type: none">• Summary of background studies, methodology, and survey report.• Code of ethics, Guidelines and Implementation Plan.• Education and monitoring plans.• Training and survey templates.• 2nd awareness survey results.• Followup recommendations.
5B	Power Point Presentation	Summarize final report for public presentations. Provide wrap-up presentation to CAC and City Council.

5. Back-up Plan

It is understood that Dr. Thomas Shanks will provide the training and consultation as described above. In the event that Dr. Shanks is incapacitated or otherwise unable to perform the duties of this scope of work, the following contingency plan will be in effect. Dr. Philip Riley, formerly Vice Provost, Associate Dean, and Director of the Summer Program at Santa Clara University and currently Associate Professor of Religious Studies, will take over as Coordinator of this program. When this program begins, Dr. Riley will attend key organizational meetings, as agreed to ahead of time by Dr. Shanks and the City of Milpitas, so that he has the knowledge base to step into the coordinating role Dr. Shanks would normally play. For this initial work, Dr. Riley will be paid his consulting rate of \$125.00 per hour. Because Dr. Riley will be in attendance at two or three key meetings and will meet separately with Dr. Shanks, the City will budget up to 8 hours or \$960 additional to cover the costs of Dr. Riley. Should Dr. Shanks become incapacitated, Dr. Riley will be paid from money that would normally have gone to Dr. Shanks. Dr. Riley would then be responsible for training or obtaining the services of trainers comparable to Dr. Shanks.

6. Cost

Consultant and the City of Milpitas agree to a cost of \$21,000 for the program as described above. A 10% retention will be paid immediately upon signing the contract (\$2100), 10% retention (\$2100) will be paid upon the approval of the final deliverable. The remainder (\$16,800) will be paid in four equal installments of \$4200 upon the completion of Tasks 1,2,3, and 4.

The fee (not to exceed \$960) to Dr. Riley is not included in the above amount.

Therefore, the total cost of the project to the City is not to exceed \$21,960.

Exhibit B

Project Schedule

Date	Day	Activity	Task No.
Jan. 20	Tues.	Council approves hiring of Consultant	
Feb. 17	Tues.	Stakeholder report, Code plan, draft awareness survey	1
March 2	Tues.	Survey Draft approved; Begin conducting awareness survey	2
March 16	Mon.	Complete survey report; Code Development Process begins	3
May 5	Wed	CAC reviews draft Code, Guidelines and Implementation Plan	3
May 18	Tues	Council reviews draft Code, Guidelines and Implementation Plan	3
June 1	Tues.	Council approves Code, Guidelines and Implementation Plan	3

Implementation

June 14	Mon.	Earliest date for initial training post Ethics Code policy	4a
July 12	Mon.	Filing period begins for City Council race	
Aug. 6	Fri.	Filing deadline for City Council race	
Aug. 9	Week of	Training for Mayoral/Council candidates; on-going problem-solving begins*	4a
Nov. 2	Tues	Election; problem-solving ends*	4a
Nov. 3	Wed.	Begin conducting awareness surveys concerning the campaign	5
Nov. 4	Th.	Begin remaining training sessions**	4b
Dec 15	Wed.	Training Sessions** end; conduct awareness/final assessment surveys not focusing on campaign	4b
Early Jan	Wed.	Post-election Assessment Meeting	5
Jan. 31	Mon.	Final report due	5

* Training opportunities for public, electeds, and appointeds concerning ethical campaigning.

**Training opportunities for public, electeds, appointeds, and management staff not focusing on campaigning.